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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,526	02/23/2004	Richard E. Rowe	IGT1P042C1/P000392-008	1568
79646                      7590                      05/10/2010 Weaver Austin Villeneuve & Sampson LLP - IGT Attn: IGT P.O. Box 70250 Oakland, CA 94612-0250				
EXAMINER				
SAGER, MARK ALAN				
ART UNIT		PAPER NUMBER		
3714				
NOTIFICATION DATE		DELIVERY MODE		
05/10/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@wavsip.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/785,526

**Applicant(s)**

ROWE, RICHARD E.

**Examiner**

M. Sager

**Art Unit**

3714

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): objection to claim 15 and 112(1<sup>st</sup>) for claims 23-26.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). Apr 28, 2010  
13. ☐ Other: \_\_\_\_\_.

/M. Sager/  
Primary Examiner, Art Unit 3714

Continuation of 3. NOTE: there is no teaching of a correlation of update containing payable for gaming machine for presently claimed events where incorporation by reference merely provides evidence of tracking such events without link to function of update of payable for game machine at a certain period of time during day as proposed and thus is deemed new matter since the proposed claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention regarding when an event is selected from the group as proposed where the update a game software component containing a payable for a gaming machine when an event proposed occurs on one gaming terminals during a certain period of time during the day. The function is new matter and the citation to incorporated application does not teach/suggest the specific function as proposed, as would have been interpreted by an artisan. The amendment has not provided evidence that proposed function was reasonably conveyed within original specification that inventors possessed the invention as proposed as would have been interpreted by an artisan since there is no link for event to be selected from group consisting of card-in, card-out, power hit, tilt, promotional card insert, promotional card removal as proposed with inclusive jackpot event.. Also, it is unclear from record what proposed 'power hit' refers.

Continuation of 11. does NOT place the application in condition for allowance because: The Office disagrees with remarks on page 7 regarding finality being improper as further noted below the optional function of claim 11 was treated as being encompassed by admitted prior art or admitted prior art in view of Acres or Joshi for gathering/tracking, storing and reporting transaction data (as frequency of use) of each of various configurations of gaming machines as stated in paragraph 10 and 13 of final action that cites in part paragraphs 3-12, fig 1 of instant application as evidence and was maintained from final action mailed 8/19/09; thus, the remarks regarding function of claim 11 not being treated is not timely presented since such assertion that admitted prior art fails to teach/suggest to store transaction data of each configuration should have been presented after action mailed 8/19/09 to have been timely. The disclosed prior art states to send accounting information and to track performance of all gaming machines under control of an entity as noted in action that an artisan would interpret as transaction data of coin in, coin out and amount per bet for each configuration of the gaming machine(s) since gaming machines in different locations (para 3-12, fig 1) comply with different jurisdiction requirements to operate lawfully as noted in aforementioned actions. The admitted prior art includes dynamic update of game software component containing a payable for gaming machine(s) when an event occurs on at least one gaming terminals during a certain period of time during the day to include an event of a jackpot (paragraphs 5, 7-8, fig 1) with additional evidence under MPEP 2131.01 per Torango, Kelly, Xidos, Acres, Boushy or Eggleston as noted in final. As noted in final actions, either the Assignee admitted prior art stores current and past configurations or it was deemed obvious to an artisan to store current and past configurations of each gaming machine so as to comply with regulatory requirements [or to report status to executive]. Thus, the discussion of storing transaction data as admitted prior art or as further suggested by Acres or Joshi entails such current and past configurations as would have been interpreted by an artisan to comply with regulatory requirement or for executive reporting. The evidence of storing transaction data was discussed at least in paragraph 10 of action that related storing performance data for all of each of a plurality of different game software configurations used on the gaming terminals. Thus, finality is deemed proper as having treated merits of claims including optional function of claim 11 that fails to state a condition material to its patentability. At best, argument alleges patentability based on categorization of tracked data; however, such an argument, if present, is not timely (sic) and is not persuasive due to reports generated summarizing performance of all gaming machines within the entity including for an executive as admitted in background paragraphs 3-12, esp 5-11. The manner of storing frequency of use categorized according to current and past configurations fails to critically distinguish over Assignee disclosed prior art in view of Acres or Joshi that performs same function of storing by same structure for same purpose where the form of generated reports includes performance data of current and past configurations to comply with regulatory reporting including changes in configuration of gaming machines and/or for an executive to determine changes in frequency of use of various gaming machines as would have been interpreted by an artisan. To allege, as inferred from argument, that an executive would not review performance of past configuration against current configurations is counter to sound business strategy as would have been interpreted by an artisan, thus is not persuasive. At the least, reporting current and past configuration frequency of use would in the alternative, be obvious to track changes based in part on changes to configurations for entity to render decisions regarding various configurations (paragraphs 3-12, fig 1); however, the Office maintains, the Assignee disclosed prior art includes reporting current and past due to 'all'. The final action is maintained as being proper where optional function of claim 11 was treated [under paragraph 10 in final and in prior final] as transaction data gathered by game machine(s) and stored at server as disclosed in paragraph 3-12 as would have been interpreted by an artisan and further suggested by Acres or Joshi since storing transaction data according to current and past software configurations is in accordance with regulatory reporting requirements that Assignee admitted prior art states gathering, storing and reporting transaction data (para 3-12) where categorizing according to each current and past game software configuration is complying with regulatory reporting and/or for executive decision regarding changes. In the alternative, if admitted prior art lacks categorized according to each current and past game software configurations (the Office maintains admitted reporting includes such categorization due to 'generates reports summarizing the performance of all gaming machines within the entity'), the form of relating frequency of use data as transaction data to different form/configuration of game machine would have been obvious to an artisan to improve business determination of frequency of use of different game models/configurations. Evidence of gathering frequency of use data as transaction data is as further shown in Acres or Joshi. The optional form of how the data is stored relationally fails to critically distinguish over prior art as would have been interpreted by an artisan and as treated in final. Further, the proposed language for claim 22 is not optional, but as would be interpreted by an artisan, as stated above regarding claim 11 regarding same function, Assignee disclosed prior art includes such function or in the alternative, is deemed obvious to an artisan to comply with regulatory reporting of configuration changes and/or for executive reporting for sound business determinations based in part on changes to configurations (supra).

Finally, 1449 lacks fee and/or statement required when prosecution is closed as in current status of application.